

CONTRACT FOR PROFESSIONAL SERVICES

This AGREEMENT made this 15th day of January, 20 14 in the Territory of the Virgin Islands, by and between the Government of the Virgin Islands, **DEPARTMENT OF PROPERTY AND PROCUREMENT**, on behalf of the **DEPARTMENT OF HUMAN SERVICES**, Knud Hansen Complex – Building A, 1303 Hospital Ground, St. Thomas, Virgin Islands 00802, (hereinafter referred to as "Government") and **PROGRAMMING SOLUTIONS, INC.**, 9000 Telford Crossing, Brooklyn Park MN 55443 (hereinafter referred to as "Contractor").

WITNESSETH:

WHEREAS, the Government is in need of the services of a Contractor who has experience and expertise in the design, development, and operation of a federally-certified Public Assistance computer software and hardware system, to maintain, enhance, and operationally support the Client Application, Registration, and Issuance of Benefits System (hereinafter called "CARIBS"), the Disaster Supplemental Nutrition Assistance Program System (hereinafter called "D-SNAP") and the Medical Assistance Program (hereinafter called "MAP") for the Government's Department of Human Services and to provide related technical assistance, training, and support services, which duties and responsibilities are more particularly described in Addendum I attached hereto;

WHEREAS, the passage of the Affordable Care Act by Congress is necessitating modifications and enhancements to CARIBS to accommodate federally mandated changes to the Medical Assistance Program;

WHEREAS, the Contractor is licensed to provide, and is willing and capable of providing such services;

WHEREAS, the Contractor won the was selected in an open procurement, RFP 002-2014(P) to provide the expertise for the maintenance and operation of the CARIBS and D-SNAP systems that are essential to support the SNAP, MAP and ECAP programs;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and intending to be legally bound by this written instrument, the parties hereto do covenant and agree as follows:

PC100DHS15

2014

1. **SERVICES**

The Contractor will provide the services described in Addendum I (Scope of Services) attached hereto and made a part of this contract.

2. **TERMS**

Upon the execution of this Contract by the Governor of the U.S. Virgin Islands, this Contract shall commence on January 1, 2014 and shall terminate on December 31, 2015. The Government reserves the right to renew this Contract for two (2) additional one (1) year periods at negotiated rates.

3. **COMPENSATION**

The Government, in consideration of the satisfactory performance of the services described in Addendum I, (Scope Of Work) agrees to pay the Contractor a sum not exceed **TWO MILLION, THREE HUNDRED SIXTY-TWO THOUSAND, EIGHT HUNDRED and 00/100 (\$2,362,800.00) DOLLARS**, for services provided under this Contract, in accordance with the provisions set forth in Addendum II, (TERMS OF COMPENSATION), attached hereto.

4. **TRAVEL EXPENSES**

In addition to the compensation for services as specified in Paragraph 3 (Compensation) above, the Government agrees to pay documented transportation, subsistence, lodging and other travel expenses, while in travel status, for trips which have been authorized in writing and in advance, by the Government. These costs shall be reimbursed on the same basis as is applicable to non-contract employees of the Government, or as agreed to by an addendum to this Contract.

5. **RECORDS**

The Contractor, when requested, will present documented, precise records of time and/or money expended under this Contract.

6. **PROFESSIONAL STANDARDS**

The Contractor agrees to maintain the professional standards applicable to its profession and to consultants doing business in the United States Virgin Islands.

7. **DOCUMENTS, PRINTOUTS, ETC.**

All documents, books, records, instructional materials, programs, printouts and memoranda of every description derived therefrom and pertaining to this Contract shall become the property of the Government and shall be turned over to it at the termination of this Contract. The above-described materials shall not be used by Contractor or by any other person or entity except upon the written permission of the Government.

8. LIABILITY OF OTHERS

Nothing in this Contract shall be construed to impose any liability upon the Government to persons, firms, associations, or corporations engaged by Contractor as servants, agents, or independent contractors, or in any other capacity whatsoever, or make the Government liable to any such persons, firms, associations, corporation for the acts, omissions, liabilities, obligations and taxes of Contractor or whatsoever nature, including but not limited to unemployment insurance and social security taxes for the Contractor, his servants, agents or independent contractors.

9. ASSIGNMENT

The Contractor shall not subcontract or assign any part of the services under this Contract without the prior written consent of the Government.

10. INDEMNIFICATION

Contractor agrees to investigate, defend and hold harmless the Government from and against any and all loss, damage, liability, claims, demands, detriments, costs, charges and expense (including attorneys' fees) and causes of action of whatsoever character which Government may incur; sustain or be subjected to, arising out of or in any way connected to the services to be performed by Contractor under this Contract and arising from any cause, except the sole negligence of Government.

11. INDEPENDENT CONTRACTOR

The Contractor shall perform this Contract as an independent contractor and nothing herein contained shall be construed to be inconsistent with this relationship or status.

12. GOVERNING LAW

This Contract shall be governed by the laws of the U.S. Virgin Islands.

13. WAIVERS AND AMENDMENTS

No waiver, modification or amendment of any term, condition or provision of this Contract shall be valid or of any force or effect unless made in writing, signed by the parties hereto or their duly authorized representatives, and specifying with particularity the nature and extent of such waivers, modification or amendment.

Any such waiver, modification or amendment in any instance or instances shall in no event be construed to be a general waiver, modification or amendment of any of the terms, conditions or provisions of this Contract, but the same shall be strictly limited and restricted to the extent and occasion specified in such signed writing or writings.

14. ENTIRE AGREEMENT

This Contract constitutes the entire agreement between the parties hereto, and all prior understanding or communications, written or oral, with respect to the Project which are the subject matter of this Contract, are merged herein.

15. RIGHT TO WITHHOLD

If work under this Contract is not performed in accordance with the terms hereof, the Government will have the right to withhold out of any payment due to the Contractor, such sums as Government may deem ample to protect it against loss or to assure payment of claims arising there from, and, at its option, the Government may apply such sum in such manner as the Government may deem proper to secure itself or to satisfy such claims. The Government will immediately notify the Contractor in writing in the event that it elects to exercise its rights to withhold.

No such withholding or application shall be made by the Government if and while Contractor gives satisfactory assurance to the Government that such claims will be paid by the Contractor or its insurance carrier, if applicable in the event that such contest is not successful.

16. CONDITION PRECEDENT

This Contract shall be subject to the availability and appropriation of funds and to the approval of the Governor.

17. TERMINATION

Either party will have the right to terminate this Contract with or without cause on ninety- (90) days written notice to the other party specifying the date of termination.

18. PARTIAL TERMINATION

The performance of work under this Contract may be terminated by the Government in part, whenever the Government shall deem such termination advisable. This partial termination shall be affected by delivering to the Contractor a Notice of Partial Termination specifying the extent to which the term and/or duties under this Contract are terminated and the date upon which such termination becomes effective. The Contractor shall be entitled to receive payments for services provided to the date of termination, including payment for the period of the ninety- (90) day notice.

19. NONDISCRIMINATION

No person shall be excluded from participating in, be denied the proceeds of, or be subject to discrimination in the performance of this Contract on account of race, creed, color, sex, religion, national origin or disability.

20. CONFLICT OF INTEREST

- (a) Contractor covenants that it (including owners, partners, directors, officers and/or principal stockholders) has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract.
- (b) Contractor further covenants that he /she is:
 - (1) not a territorial officer or employee (i.e., the Governor, Lieutenant Governor, member of the Legislature or any other elected territorial official; or an officer; or employee of the legislative, executive or judicial branch of the Government or any agency, board, commission or independent instrumentality of the Government, whether compensated on a salary, fee or contractual basis); or
 - (2) a territorial officer or employee and, as such, has:
 - (i) familiarized himself/herself with the provisions of Title 3, Chapter 37, Virgin Islands Code, pertaining to conflicts of interests, including the penalties provision set forth in Section 1108 thereof;
 - (ii) not made, negotiated or influenced this contract, in (his/her) official capacity;
 - (iii) no financial interest in the contract as that term is defined in Section 1101, (1) of said Code Chapter.

21. EFFECTIVE DATE

The effective date of this Contract shall be the day of execution of the Contract by the Governor.

22. DEBARMENT CERTIFICATION

By execution of this Contract, the Contractor certifies that it is eligible to receive contract awards using federally appropriated funds and that it has not been suspended or debarred from entering into contracts with any federal agency. The Contractor shall include this provision in each of its subcontracts hereunder and shall furnish its sub-contractors with the current "LIST OF PARTIES EXCLUDED FROM FEDERAL PROCUREMENT OR NON-PROCUREMENT." In the event the Contractor or sub-contractor misrepresents its eligibility to receive contract awards using federal funds, the Contractor or sub-contractor agrees that it shall not be entitled to payment for any work performed under this Contract or sub-contract and that the contractor or sub-contractor shall promptly reimburse the Government of the Virgin Islands for any progress payments heretofore made.

If, during the term of this contract, the Contractor shall become ineligible to receive contract awards using federal funds, be entitled to payment for any work performed under this contract or sub-contract after the effective date of such ineligibility.

Contract No. PC100DHS15

Initials: 20 24

23. NOTICE

Any notice required to be given by the terms of this Contract shall be deemed to have been given when the same is sent certified mail, postage prepaid or personally delivered, addressed to the parties as follow:

Government

Vivian I. Ebbesen-Fludd, BSN, MS
Commissioner Designee
Government of the Virgin Islands
Department of Human Services
Knud Hansen Complex, Bldg. A
Charlotte Amalie, St. Thomas, VI 00802
Attention: Richard G. Lacombe
Executive Project Manager
Telephone: (340) 774-0930 Ext. 4111
Fax: (340) 774-3466

Cc:

Randolph Bennett
Commissioner Designee
Department of Property & Procurement
No. 1 Sub Base, 3rd Floor
St. Thomas, VI 00802
Telephone: (340) 774-0828
Fax: (340) 777-9587

Contractor:

Programming Solutions, Inc.
9000 Telford Crossing
Brooklyn Park, MN 55443
Attention: William C. Hill, President
Telephone: (763) 424-8154
Fax: (763) 424-9518

24. LICENSES, PERMITS AND INSURANCE

Contractor covenants that it has:

- (a) obtained all of the applicable licenses or permits, permanent, temporary or otherwise as required by Title 27 of the Virgin Island Code; and,
- (b) familiarized itself with the applicable provisions of Title 27 of the Virgin Islands Code pertaining to professions and occupations.

The Contractor shall obtain, pay for, and keep in force the following minimum insurance and shall furnish a certificate or certificates evidencing that such insurance is in effect:

- disability, workman's compensation, and unemployment compensation in accordance with the statutory requirements of the Government;
- comprehensive general liability insurance (including automobile and broad form contractual coverage) against bodily injury or death of any person in amounts of not less than \$250,000 per claim and two million dollars (\$2,000,000) per incident; and,
- insurance against liability for property damages including content coverage for all records maintained pursuant to this Contract, in the amounts of not less than \$250,000 per claim and two million dollars (\$2,000,000) per incident.

25. FALSE CLAIMS

Contractor warrants that it shall not, with respect to this contract, make or present any claim upon or against the Government of the Virgin Islands, or any officer, department, board, commission, or other agency thereof, knowing such claim to be false, fictitious, or fraudulent. Contractor acknowledges that making such a false, fictitious, or fraudulent claim is an offense under Virgins Islands' law.

26. NOTICE OF FEDERAL FUNDING

Contractor acknowledges that this contract is funded, in whole or in part, by federal funds. Contractor warrants that it shall not, with respect to this Contract, make or present any claim knowing such claim to be false, fictitious, or fraudulent. Contractor acknowledges that making such a false, fictitious, or fraudulent claim is a federal offense.

27. PUBLICITY

No publicity including press releases, interviews, bulletins, or articles in any public, private or trade medium concerning this Contract, its terms, execution, implementation, or results, can be released without approval of the Government.

28. OWNERSHIP

- (a) The Government shall have unlimited rights to use, disclosure, duplicate, and/publish for any purpose all information and data developed, derived, documented or furnished by the Contractor under this Contract, and shall have a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, all operational and application software developed, purchased and /or installed under this Contract, and subject to existing copyrights of the Contractor and the terms and conditions of this Paragraph.
- (b) All application software developed and/or transferred in this project, including modifications, enhancements and/or alternatives shall be the sole and exclusive property of the Government; free of any claim or retention of rights by the Contractor.
- (c) Any additional or advanced operations software concepts and/or technologies that may be developed during the term of the Contract shall be and shall remain the exclusive property of the Contractor. However, the Contractor shall provide such additional or advanced concepts and/or technologies at no additional cost and with no restrictions other than those contained herein.

- (d) The Government retains all ownership rights to the system as successfully implemented under this project, including but not limited to, ownership and licenses of any and all applications software of the project, operational codes and plans. The Contractors shall provide the Government with interim copies of the most current versions of all program source code, data dictionary and other relevant software documentation on computer readable media on a weekly basis. Concurrent with the final delivery of the software, the Contractor shall provide the Government with at least one (1) copy of the source code, and computer readable media, for each application program provided. If the Contractor uses or purchases any software or structured methodology product as part of this and/or for the use in this project, e.g., to develop, document, modify, test, compile, or otherwise assist in the project, the software product becomes the property of the Government at the completion of the project without cost.
- (e) The Government retains all ownership rights and warranties to all computer hardware and/or equipment purchased and/or installed by the Contractor on behalf of the Government for the operation or maintenance of the software of this Project.

29. CONTRACTOR'S REPRESENTATIONS

The Contractor represents that it is in compliance with:

1. Title VI of Civil Rights Act of 1964 (42 USC 2000d *et seq.*);
2. Section 504 of the Rehabilitation Act of 1973, as amended (29 USC 794);
3. The Copeland "Anti-Kick Back Act (18 USC 874); as supplemented in Department of Labor Regulations (29CFR, part 3);
4. Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Order 11375, and as supplemented in Department of Labor Regulations (41CFR, Part 60);
5. The Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by the Department of Labor Regulations (29 CFR, Part 5); 2000d *et seq.*;
6. The United States Environmental Protection Agency (EPA), 40 CFR, Part 15, pursuant to the Clean Air Act, as amended, (Air Act), (42 USC 7401 *et seq.*); the Federal Water Pollution Control Act, as amended ("Water Act"), (33 USC 1251 *et seq.*); and Executive Order 11738; and,
7. The United States Department of Health and Human Services Regulations found in 45 CFR, parts 80 and 84.

30. NON-SOLICITATION

During the term of this Contract, the Government shall not, directly or indirectly, procure or seek to procure, any employee of the Contractor; nor shall the Contractor, either directly or indirectly, procure or seek to procure, any employee of the Government, without written permission of the Government.

Contract No. PC100DHS15

Initials: hcH

31. OTHER PROVISIONS

Addendum I, Addendum II and Addendum III attached to this Contract are incorporated into and made a part of this Contract. In the event of a conflict between the terms and conditions of the general provisions of this Contract, as set out in Sections 1 through 31 of this Contract, and the terms and provisions of any Addendum or Attachment to this Contract, the terms and conditions of said general provisions of the Contract shall prevail.

Contract No. PC100DHS15Initials: 907

IN WITNESS WHEREOF, the parties have hereunto set their hands on the day and year first above written.

WITNESSES:

Rochelle Whalley 2/21/15
Date

Robertson 2/24/15
Date

Theresa Petersen 9/22/15
Date

Scott Bush 9/22/15
Date

Cynthia M Hill 1/15/15
Date

Brendly Bender 1/15/15
Date

GOVERNMENT OF THE VIRGIN ISLANDS
DEPARTMENT OF HUMAN SERVICES

Vivian I. Ebbesen-Fludd 7/21/2015
Date
Vivian I. Ebbesen-Fludd, BSN, MS
Commissioner Designee

DEPARTMENT OF PROPERTY & PROCUREMENT

Randolph Bennett 9/22/15
Date
Randolph Bennett
Commissioner Designee

CONTRACTOR: PROGRAMMING SOLUTIONS INC.

William C. Hill 7/15/15
Date
William C. Hill, President

APPROVED:

Honorable Kenneth E. Mapp
Honorable Kenneth E. Mapp
Governor of the U.S. Virgin Islands

10-16-15
Date

APPROVED TO LEGAL SUFFICIENCY
DEPARTMENT OF JUSTICE

By: James S. Carroll
James S. Carroll
Acting Attorney General of the Virgin Islands

9/22/15
Date

Account Code No. _____

Contract No. PC100DHS15

Initials: 2026